

AMENDED IN ASSEMBLY MAY 2, 2007

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 809**

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**Introduced by Assembly Member Blakeslee**

February 22, 2007

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An act to amend Section 399.12.5 of the Public Utilities Code, relating to energy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 809, as amended, Blakeslee. Energy: renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard).

The existing definition of an “eligible renewable energy resource,” includes the electricity generated by a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical

corporation as of January 1, 2003. An exception to this provision provides that a small hydroelectric generation facility that is an eligible renewable energy resource retains eligibility if efficiency improvements at the facility undertaken after January 1, 2003, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in a new or increased appropriation of diversion of water from a watercourse.

Under existing law, the State Water Resources Control Board is required to consider and act upon all applications for permits to appropriate water. Existing law requires the board to expedite processing of applications for certain small hydroelectric powerplants and applications or petitions for retrofit of hydroelectric plants at existing dams, canals, or conduits where the streamflow regime will not be changed and where there will be no significant adverse environmental impacts.

Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with authority over matters relating to water quality. Existing law provides for the issuance by the state board, or by a regional board to which the state board has delegated authority, of a water quality certification pursuant to the federal Clean Water Act.

This bill would provide that the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if the incremental increase is the result of efficiency improvements from a retrofit that do not result in ~~a~~ *any* new or increased appropriation or diversion of water from a watercourse, the hydroelectric generation facility has received a water quality certification ~~or exemption~~ from the board or a regional board *or is exempted from the certification requirement for a specified reason,* ~~and~~ the hydroelectric generation facility was operational prior to January 1, 2007, *the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance, and all of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment, as defined, by the retail seller.* The bill would provide that a retrofit does not result in a new or increased appropriation or diversion of water if the state board determines the

retrofit is eligible for expedited processing pursuant to the above described application provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 399.12.5 of the Public Utilities Code is  
2 amended to read:

3 399.12.5. (a) Notwithstanding *subdivision (b) of* Section  
4 399.12, a small hydroelectric generation facility that satisfies the  
5 criteria for an eligible renewable energy resource pursuant to  
6 Section 399.12 shall not lose its eligibility if efficiency  
7 improvements undertaken after January 1, 2003, cause the  
8 generating capacity of the facility to exceed 30 megawatts, and  
9 the efficiency improvements do not result in a new or increased  
10 appropriation or diversion of water from a watercourse. The entire  
11 generating capacity of the facility shall be eligible.

12 (b) Notwithstanding *subdivision (b) of* Section 399.12, the  
13 incremental increase in the amount of electricity generated from  
14 a hydroelectric generation facility as a result of efficiency  
15 improvements at the facility, is electricity from an eligible  
16 renewable energy resource, without regard to the electrical output  
17 of the facility, if all of the following conditions are met:

18 (1) The incremental increase is the result of efficiency  
19 improvements from a retrofit that do not result in ~~a~~ *any* new or  
20 increased appropriation or diversion of water from a watercourse.  
21 For purposes of this paragraph, a retrofit does not result in a new  
22 or increased appropriation or diversion of water if the State Water  
23 Resources Control Board determines that the retrofit is eligible for  
24 expedited processing pursuant to Section 1490 of the Water Code.

25 (2) The hydroelectric generation facility has, within the  
26 immediately preceding 15 years, received ~~an exemption or~~  
27 certification from the State Water Resources Control Board  
28 pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec.  
29 1341), or has received certification from a regional board to which  
30 the state board has delegated authority to issue certification, *unless*  
31 *the facility is exempt from certification because there is no potential*  
32 *for discharge into waters of the United States.*

1 (3) The hydroelectric generation facility was operational prior  
2 to January 1, 2007, *the efficiency improvements are initiated on*  
3 *or after January 1, 2008, the efficiency improvements are not the*  
4 *result of routine maintenance activities, as determined by the*  
5 *Energy Commission, and the efficiency improvements were not*  
6 *included in any resource plan sponsored by the facility owner*  
7 *prior to January 1, 2008.*

8 (4) *All of the incremental increase in electricity resulting from*  
9 *the efficiency improvements are demonstrated to result from a*  
10 *long-term financial commitment by the retail seller. For purposes*  
11 *of this paragraph, “long-term financial commitment” means either*  
12 *new ownership investment in the facility by the retail seller or a*  
13 *new or renewed contract with a term of 10 or more years, which*  
14 *includes procurement of the incremental generation.*

15 SEC. 2. *The Legislature declares both of the following:*

16 (a) *It is the intent of the Legislature to promote efficiency*  
17 *improvement projects at hydroelectric generation facilities located*  
18 *in California by requiring that the incremental electricity resulting*  
19 *from the efficiency improvements be owned by, or committed to,*  
20 *a retail seller for a period of no less than 10 years since those*  
21 *contracts principally exist for hydroelectric generation facilities*  
22 *owned by California’s electrical corporations.*

23 (b) *It is the intent of the Legislature to promote new efficiency*  
24 *improvement projects at hydroelectric generation facilities located*  
25 *in California by excluding eligibility of projects identified in*  
26 *procurement plans prior to January 1, 2008.*